

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY E. HUFF,

Plaintiff-Counterdefendant-
Appellee,

v

CHERRIE LYNN HUFF, a/k/a CHERRIE LYNN
DUTY,

Defendant-Counterplaintiff-
Appellant.

UNPUBLISHED
February 12, 2004

No. 243456
Livingston Circuit Court
LC No. 02-001610-DO

Before: Zahra, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

In this divorce action, defendant appeals as of right from the trial court's judgment of divorce. We vacate that portion of the judgment which is the subject of this appeal and remand to the trial court.

Plaintiff and defendant were married on July 30, 1999. After approximately two years, defendant left the marital home. Plaintiff filed for divorce on March 18, 2002. At issue in this case is whether the trial court properly divided the equity in the marital home that had accumulated during the marriage. The trial court awarded defendant \$6,000 of the marital home's apparent \$56,000 equity. The remainder of the money was awarded to plaintiff to offset stock market losses. Because defendant shared in these losses, to the extent she was unable to share in their appreciated value, we find that the trial court abused its discretion by using the equity in the marital home to offset plaintiff's stock market losses.

"This Court reviews a property distribution in a divorce case by first reviewing the trial court's factual findings for clear error, and then determining whether the dispositional ruling was fair and equitable in light of the facts."¹ Clear error exists when a review of the record leaves us with the conclusion that a mistake has been made.² But a dispositional ruling is discretionary

¹ *Olson v Olson*, 256 Mich App 619, 622; 671 NW2d 64 (2003).

² *Moore v Moore*, 242 Mich App 652, 654-655; 619 NW2d 723 (2000).

and will be upheld unless we are convinced that the division was inequitable under the circumstances.³

The goal in distributing marital assets in a divorce proceeding is to reach an equitable division in light of the circumstances.⁴ To achieve equity, the trial court should consider the duration of the marriage, the contribution of each party to the marital estate, life status, earning ability, age, health and needs, past conduct, and any other equitable circumstance.⁵ The determination of relevant factors will vary with the circumstances of each case, and no one factor should be given undue weight.⁶

The trial court's first step in distributing property during a divorce proceeding is to determine the assets that comprise the marital estate.⁷ Generally, assets acquired during the marriage are subject to division between the parties; whereas, the parties' separate assets may not be invaded.⁸ An exception to this rule, however, is when a spouse "contributed to the acquisition, improvement, or accumulation of the property."⁹ In that situation, the trial court may award all or a portion of a party's separate asset to a spouse. We have interpreted MCL 552.401 to allow for the division of the *appreciation* of a premarital asset attributable in part to a spouse's contributions, which allowed the owner to increase the asset's value.¹⁰

Here, the trial court properly found that the appreciation of the marital home was a marital asset, given defendant's contributions during the marriage.¹¹ Indeed, plaintiff admitted that defendant worked during the marriage, contributed to the home, and cared for the children. Conversely, the initial balances of plaintiff's IRA and inheritance, both received or earned before the marriage, were clearly his separate property. But where a party's stock and investments increase due to "efforts, facilitated by [the other party's] activities at home[.]" such appreciation is considered a marital asset to be divided.¹² Thus, any appreciation of plaintiff's stock holdings would have been a marital asset to be divided, given defendant's noted contributions.

³ *Draggou v Draggou*, 223 Mich App 415, 429-430; 566 NW2d 642 (1997).

⁴ *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002).

⁵ *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996); *McNamara*, *supra* at 185.

⁶ *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992).

⁷ *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997).

⁸ *McNamara*, *supra* at 183.

⁹ MCL 552.401.

¹⁰ See *Reeves*, *supra* at 494-497.

¹¹ See *id.* at 495-496.

¹² *Id.* at 495; quoting *Hanaway v Hanaway*, 208 Mich App 278, 294; 527 NW2d 792 (1995).

It appears that the trial court recognized that defendant would have had an interest in any appreciation of plaintiff's stock and investments when it commented that defendant must also "take the risk of losing." However, the trial court failed to consider the losses already suffered by defendant in this regard when it offset plaintiff's losses in the stock market with the marital equity in the home. As no *appreciation* occurred in plaintiff's investments, there was no marital asset in the form of stock to be divided between the parties.¹³ Both parties suffered the *loss* of that potential marital asset. The fact plaintiff suffered losses from his separate assets; i.e., the initial balances in the IRA and inheritance during the marriage is not attributable to defendant's efforts in the marriage. Thus, the trial court's decision to offset plaintiff's losses with the marital equity in the home was inequitable.

Nevertheless, we disagree with defendant that remand to the trial court is necessary for a factual finding concerning the disputed value of the marital home. In actions tried without a jury, the trial court must make factual findings and state separately its conclusions of law.¹⁴ A trial court's findings of fact are sufficiently specific if the parties are able to determine the "values of their individual awards by consulting the verdict along with the valuations to which they stipulated."¹⁵

A review of the record shows that the trial court made a finding that the equity in the marital home increased and then allotted \$6,000 of this increase to defendant. However, the trial court never specifically stated whether it accepted defendant's appraisal of \$221,000 (\$56,000 in equity), or plaintiff's opinion that the home was worth \$200,000 (\$35,000 in equity). Given the trial court's reasoning that the stock market loss of \$48,000 should be offset by the marital home's appreciated equity, we find that the trial court must have accepted defendant's appraisal of \$221,000.

After offsetting the market losses of \$48,000 with the \$56,000 appreciated equity in the marital home, the trial court distributed \$6,000 of the remaining \$8,000 to defendant. The trial court explained that it was awarding defendant "a little more than what she would normally get because of the child care of the extended family and her labors during the course of the marriage" Thus, while the *result* of the trial court's decision was that defendant received 75% of the remaining equity in the home, the trial court's *intent* was simply to award defendant an additional amount for her child care and other efforts. Because it is unclear how the trial court would divide the \$56,000 in marital home equity absent an offset for the market losses, a remand to the trial court is necessary for the trial court to make further factual findings and distribute the appreciated equity in the marital home.

¹³ See *McNamara*, *supra* at 183-185; *Reeves*, *supra* at 494-497.

¹⁴ MCR 2.517(A)(1).

¹⁵ *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993).

Vacated in part and remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper